



## Office of Inspector General

# OFFICER INVOLVED SHOOTING REVIEW JUSTIN PRESCOTT

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Inspector General

# Officer Involved Shooting Review

## Justin Prescott

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### INTRODUCTION

The purpose of the Inspector General's investigation is to review tactics, departmental policies, equipment, and training with the intent to identify lessons learned and develop recommendations. The primary purpose of lessons learned is not to find fault in policy, training, equipment, or tactics, but to identify causes that allow for improvements that enhance the safety of the community and officers. It is important to note that this review was conducted with the benefit of hindsight and the knowledge of all concurrent events. The ability to review reports, photographs, video, and audio, allows for the critical review of the incident that is not available to officers and witnesses who are living in the moment.

A separate independent review was conducted by the Sacramento County District Attorney's Office addressing legal issues associated with filing of criminal actions. The District Attorney's review concluded the shooting death of Justin Prescott was lawful.<sup>1</sup>

### EXECUTIVE SUMMARY

On February 2, 2016, Justin Prescott spent over an hour inside the Walmart store cutting off tags and hiding merchandise on his person. His actions were witnessed by Walmart Asset Protection Associates and reported to the Sacramento County Sheriff's Department. When Prescott exited the store without paying at 6:48 p.m., he was stopped by Walmart Asset Protection Associates who attempted to bring him back inside the store. Prescott responded by holding a knife to his throat and threatened to harm himself.

Prescott fled but was confronted by two sergeants who attempted to arrest him for the theft. Despite two Taser firings and pepper spray, Prescott continued his attempt to escape by holding a knife to his throat and threatened to kill himself. He also stabbed himself in the chest. As the resistance moved to an area with extremely low light, Sergeant Gallaher, who was close to Prescott, could no longer see his hands or the knife. Observing that Prescott was irrational and likely under the influence, and fearing that Prescott could either stab him or escape and harm the public, Sergeant Gallagher fired two rounds from his handgun striking Prescott. Prescott was transported to UCD Medical center and pronounced deceased at 7:47 p.m.

The review of documents, evidence, video, audio, and policies surrounding the death of Justin Prescott developed into lessons learned and 12 recommendations.

### METHODOLOGY

The Inspector General, with cooperation from the Sacramento County Sheriff's Department, Sacramento County District Attorney's Crime Lab, and Sacramento County Coroner's Office, gathered, reviewed, and analyzed documentation from many sources to develop an understanding into the death of Justin Prescott. Policies, procedures, and training related to the

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<sup>1</sup> [http://www.sacda.org/files/8114/8061/3218/OIS -- Prescott.pdf](http://www.sacda.org/files/8114/8061/3218/OIS_-_Prescott.pdf)

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activities leading up to and including the shooting were reviewed and compared to accepted best practices in policing.

### Document, Evidence, and Policy Review

To assist in the review, information was collected from the following:

- Documents related to the shooting including witness statements, crime scene diagrams, Crime Lab reports, and Coroner's report.
- Photographs of the scene, dispatch audio, and video from Sheriff's Crime Scene Investigators.
- Review of videotaped interviews.
- Direct observation of the general area and shooting scene.
- Review of Sacramento County Sheriff's Department policies and applicable International Association of Chiefs of Police model policies.<sup>2</sup> Sheriff's policies include:
  - General Order 2/01 (Rev 6/13) Authorized Firearms and Ammunition
  - General Order 2/03 (Rev 5/08) Firearms Training and Qualification Special Weapon Training
  - General Order 2/05 (Rev 12/12) Use of Firearms
  - General Order 2/06 (Rev 10/07) Officer-Involved Shooting Incidents
  - General Order 2/07 (Rev 6/13) Handgun Tactical Light
  - General Order 2/08 (Rev 8/08) Use of Oleoresin Capsicum (O.C)
  - General Order 2/11 (Rev 12/13) and (Rev 4/16) Use of Force Policy
  - General Order 2/14 (Rev 12/12) Electronic Control Device
  - General Order 2/15 (New 10/04) Less Lethal Force Options
  - General Order 2/16 (New 1/06) Weapons Discharge Reporting Incidents
  - General Order 2/17 (Rev 3/13) Use of Force – Tactical Review Board
  - General Order 10/10 (New 9/07) In-Car Camera Systems

### Lessons Learned and Recommendations

The review of documents, evidence, video, and policies surrounding the death of Justin Prescott developed into lessons learned and 12 recommendations. Some of the recommendations were outside the scope of the shooting review, however they are important to the continued development of widely accepted policing practices within the Sacramento County Sheriff's Department.

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<sup>2</sup> <http://www.iacp.org/Model-Policies-for-Policing>

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### INCIDENT SUMMARY

During the early evening hours on February 2, 2016, Justin Prescott entered the Walmart at 10655 Folsom Boulevard in Rancho Cordova. He then spent over an hour walking through the store cutting tags off merchandise and concealing them on his person. During much of this time Walmart Asset Protection staff was observing Prescott. Store surveillance video also recorded Prescott's actions. At 6:44 p.m. Asset Protection called the Sheriff's Department reporting that a male white, approximately 28 years old and balding, was using a pocket knife to cut off merchandise tags.

At 6:48 p.m. Prescott left the store without paying for merchandise and shortly thereafter the agents stopped Prescott outside. Prescott initially denied stealing anything but eventually acknowledged that he took one item and handed it back to the Asset Protection Associate. As Asset Protection attempted to escort Prescott back into the store he backed away and pulled a red handled curved knife out of his pants pocket. He held the knife to his throat threatening to cut himself if the agents did not let him go. Prescott then fled westbound onto a driveway toward the rear of Safeway which is adjacent to Walmart.

Sergeants Patrick Gallagher and Mark Hatzenbuhler were working a supplemental contract job assigned to the Folsom Boulevard, Olsen Drive, and Zinfandel Drive business area. They were both in uniform and driving a marked Rancho Cordova Police SUV.<sup>3</sup> The sergeants were dispatched to the Walmart at 6:50 p.m. and upon arrival were told by Asset Protection Associates that Prescott had fled westbound behind the Safeway. Sergeant Gallagher was driving the patrol vehicle and drove west along the front of the Safeway and at the far west end he turned the patrol vehicle north toward the rear of the store. The west side of the store has perpendicular parking along the side of the business as well as the opposite side which is adjacent to a wood neighborhood fence. Lighting in this area is sufficient to see vehicles and people without additional lighting.

Shortly after turning north the sergeants saw Prescott walking toward them. When Sergeant Gallagher stopped the patrol vehicle Prescott ran southbound past them along the driver's side of the car. Sergeant Hatzenbuhler exited the vehicle and ran after Prescott while Sergeant Gallagher turned the vehicle around facing south toward the front of the store. As Sergeant Hatzenbuhler paced Prescott along the west side of the parking lot, parallel to the wood fence, he yelled at Prescott several times to drop his knife and show his hands. At one point Hatzenbuhler saw Prescott put an item to his neck and yell, "You guys keep chasing me. Fuck you guys, I'm gonna kill myself." In response Hatzenbuhler fired one Taser cartridge at Prescott with no effect.

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<sup>3</sup> The City of Rancho Cordova contracts with the Sacramento County Sheriff's Department for policing services.

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With both sergeants trying to contain Prescott and keep him away from the front parking lot of the Safeway, Prescott reversed direction and fled northbound toward the back of the store. Sergeant Gallagher saw Prescott holding a knife to his throat and ordered Prescott several times to drop the knife. When Prescott did not comply, Sergeant Gallagher fired one Taser cartridge which had very little effect. As Prescott continued toward the back of the store with the knife still to his throat Sergeant Hatzenbuhler sprayed Prescott in the face with pepper spray(OC) which had minimal affect. Prescott then began making motions like he was stabbing himself in the chest with the knife.

As Prescott and the sergeants moved around to the back of the store the available light became minimal. Light sources were limited to the back wall of the store. The patrol car which was parked along the west side of the store pointing at a south/west angle toward the wood fence provided no light to the rear of the store. Without an additional light source the lighting behind the store is not adequate to identify a person or determine a person's actions.<sup>4</sup> Only Hatzenbuhler had a flashlight, and while he was trying to reload his Taser, Gallagher could only see the upper half of Prescott's torso. Fearing that Prescott may charge him or escape and injure someone else, Sergeant Gallagher fired two rounds from his handgun striking Prescott in the right side of his neck and through the right forearm into the abdomen.

Medical aid was requested and Sacramento Metro Fire arrived at approx. 7:00 p.m. and transported Prescott to the U.C. Davis Medical Center. He was pronounced deceased at 7:47 p.m.

### PHYSICAL EVIDENCE

The following is a list of items discovered during the investigation, a summary of the Coroner's report, and toxicology tests. This list does not include other items collected such as additional personal property of Prescott or items recovered by Walmart personnel.

Evidence collected from the west side of Safeway included Wii Controller, red car controller, Taser wires, plastic pieces, and a glasses case containing drug paraphernalia. Evidence recovered from the rear of Safeway include Taser wires with darts, two shell casings, and medical first aid material.

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<sup>4</sup> The light at the back of the store was measured at 0.3 and 0.4 foot candles.

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## Knife Possessed by Prescott

The following knife was recovered from the scene:

1. Milwaukee Hawk Bill folding Knife - total length 7 ¼" <sup>5</sup>



## Weapons Used by Sergeants

The following weapons were used by the sergeants involved in the incident:

- Taser X26 - Sgts Gallagher and Hatzenbuhler each deployed one set of darts from their department issued Taser. Sergeant Hatzenbuhler's Taser recorded 3 seconds of activation, Gallagher's Taser recorded 6 seconds of activation.



- OC/Pepper Spray – Sgt Hatzenbuhler used OC spray
- Handgun - Glock 17 Gen 4 9mm pistol - Sgt Gallagher fired 2 rounds.



Figure 1 Glock 17 Gen 4 <sup>6</sup>

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<sup>5</sup> <https://www.milwaukeetool.com/hand-tools/utility-knives/48-22-1985>

<sup>6</sup> <http://www.guns.com/reviews/glock-glock-17-gen-4/>

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### Coroner's Report

The Sacramento County Coroner's Office conducted an autopsy of Justin Prescott and determined the cause of death to be gunshot wounds. Specifically, the report identified three gunshot entry wounds with the abdomen wound consistent with a re-entry wound:

1. Gunshot entry wound of the right neck and a projectile recovered from the left scapula.
2. Gunshot entry wound of the right forearm and exit the right forearm.
3. Gunshot entry wound of the right abdomen and a projectile recovered from the abdomen.

Based upon physical evidence it appears that the projectile that entered Prescott's abdomen first passed through his right forearm.

The autopsy report also identified self-inflicted superficial incised wounds of the face and chest.<sup>7</sup>

### Toxicology Results

Blood alcohol and toxicology tests were conducted by the Sacramento County District Attorney's Office Crime Lab.

The blood alcohol report lists blood alcohol at 0.070%.

The toxicology report lists the presence of the following:

Amphetamine            183 ng/mL

Methamphetamine    1545 ng/mL

Morphine                56 ng/mL

Normal concentrations in recreational use are 0.01 to 2.5 mg/L (median 0.6 mg/L = 600 ng/ml). Concentrations above this range will likely be associated with severe, possibly life threatening, toxicity.<sup>8</sup> The level of methamphetamine in Prescott's blood was near the upper end of toxicity at 1.545 mg/L. Medical journals warn that individuals with acute methamphetamine intoxication may be highly agitated and present a serious safety risk to themselves and others.<sup>9</sup>

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<sup>7</sup> An incised wound is caused by a cutting instrument.

<sup>8</sup> National Highway Traffic Safety Administration. *Drugs and Human Performance Fact sheets*. <https://one.nhtsa.gov/people/injury/research/job185drugs/methamphetamine.htm>

<sup>9</sup> Richards, John R., MD, FAAEM and Jeter (Jay) Pritchard Taylor, III, MD. *Methamphetamine Toxicity Treatment & Management*. <http://emedicine.medscape.com/article/820918-overview>

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### LESSONS LEARNED and RECOMMENDATIONS

The purpose of this review is not to simply focus on adherence to the policies and training related to the use of force, but to review the totality of the situation to identify lessons learned and possible opportunities that may reduce the likelihood of similar events.

Justin Prescott spent over an hour inside the Walmart store cutting off tags and hiding merchandise on his person. His actions were witnessed by Walmart Asset Protection Associates and reported to the Rancho Cordova Police Department which is a contract service provided by the Sacramento County Sheriff's Department. When Prescott exited the store without paying he was stopped by Walmart Asset Protection Associates who attempted to bring him back inside the store. Prescott responded by holding a knife to his throat and threatened to harm himself.

Prescott fled but was confronted by two sergeants who attempted to arrest him for the theft. Despite two Taser firings and pepper spray, Prescott continued his attempt to escape by holding a knife to his throat and threatened to kill himself. He also stabbed himself in the chest. As the resistance moved to an area with extremely low light, Sergeant Gallaher, who was close to Prescott, could no longer see his hands or the knife. Observing that Prescott was irrational and likely under the influence, and fearing that Prescott could either stab him or escape and harm the public, Sergeant Gallagher fired two rounds from his handgun.

Prescott's threat to kill himself combined with stabbing himself were indications of emotional crisis and/or being under the influence. While his actions clearly demonstrated that he was an immediate risk to harm himself, Prescott never threatened Walmart personnel or responding officers with the knife. His actions toward the officers were resistive and not assaultive and his actions could be characterized as suicidal.

Several factors contributed to the series of events between Prescott and the sergeants.

- Both sergeants were aware that Prescott was armed and exhibiting a knife.
- The sergeants both used less lethal options, Taser and pepper spray, in an attempt to arrest Prescott.
- The use of these less lethal options required the sergeants to get dangerously close to Prescott.
- Both the Taser and pepper spray were ineffective in gaining compliance.
- The sergeants had no other less lethal options available to them at the time of deployment.
- During the confrontation, Prescott attempted to flee to the back of Safeway which is an area with very low light.
- The low light environment created a visibility problem for Sergeant Gallagher who did not have a flashlight.

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### Use of Force

The 4th and 14th amendments of the U.S. Constitution provide the foundation for deadly use of force policies in the United States. Federal court guidelines stem from the benchmark 1985 decision of the U.S. Supreme Court in *Tennessee v. Garner*. This ruling held that the Tennessee statute that permitted police officers to use deadly force in arresting non-dangerous fleeing felons was unconstitutional. This ruling sanctioned the use of deadly force only to “protect the officer and others from what is reasonably believed to be a threat of death or serious bodily harm,” (or) “if it is necessary to prevent the escape of a fleeing violent felon whom the officer has probable cause to believe will pose a significant threat of serious physical injury to the officer or others.”<sup>10</sup>

A separate independent review was conducted by the Sacramento County District Attorney’s Office addressing legal issues associated with filing of criminal actions. The District Attorney’s review concluded the shooting death of Justin Prescott was lawful.<sup>11</sup>

### Value of Video and Audio

The Sheriff’s Department requires that officers record, both video and audio, all traffic stops, vehicle pursuits, crimes in progress, or any situation or event that the officer through training and experience believes should be recorded.<sup>12</sup> In situations when officers activate the vehicles emergency lights the video and audio recording features are automatically activated. In situations that do not involve the activation of vehicle lights the officers must manually activate the video and audio recording systems. This incident did not result in the use of emergency lights and unfortunately, the sergeants did not activate the video and audio recorders.

### Recommendations

1. The Sheriff’s Department should revise General Order 10/10 to:<sup>13</sup>
  - a. Require officers to wear and activate body worn microphones during all traffic stops, all vehicle pursuits, crimes in progress, and any situation or event that the officer through training and experience believes should be recorded.
  - b. Establish a review of all critical incidents to ensure officers comply with the requirements of General Order 10/10.
  - c. Establish a random audit of in-car camera video to ensure officers are complying with the provisions of General Order 10/10.
2. Continue the evaluation of body worn cameras with the goal of full field implementation.

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<sup>10</sup> [https://cops.usdoj.gov/pdf/e10129513-Collaborative-Reform-Process\\_FINAL.pdf](https://cops.usdoj.gov/pdf/e10129513-Collaborative-Reform-Process_FINAL.pdf)

<sup>11</sup> [http://www.sacda.org/files/8114/8061/3218/OIS -- Prescott.pdf](http://www.sacda.org/files/8114/8061/3218/OIS--Prescott.pdf)

<sup>12</sup> Sheriff’s Department, County of Sacramento, General Order, In-Car Camera Systems, 10/10 (NEW 9/07)

<sup>13</sup> The Sheriff’s Department is aware of the recommendation and is working toward the revisions suggested.

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### Less Lethal and Necessary Equipment

When Sergeants Gallagher and Hatzenbuhler responded to the call they were aware that Prescott was armed with a knife. When the sergeants arrived, Prescott attempted to flee on foot and placed the knife to his throat threatening to kill himself.

The Sergeant's initial response was to attempt to contain Prescott using Taser and pepper spray. In doing so the Sergeants were forced to come within 15 feet of Prescott on several occasions. At times the distance between Prescott and the Sergeants was dangerously close.

### Recommendations

1. The Sheriff's Department should review research related to use of force as well as department data to determine frequency and effectiveness of less lethal weapons. If appropriate the results of the review should be used to modify training and less lethal devices available to personnel.
2. The Sheriff's Department should broadly deploy less lethal devices that provide a greater distance between officers and suspects. While Tasers and pepper spray are effective in reducing injuries to suspects and officers in resistive situations,<sup>14</sup> the use of either when a suspect is armed with a weapon often results in officers getting too close to the suspect. This may increase the threat to the officers, community, and suspect. Potential options should include impact munitions<sup>15</sup> as well as longer distance applications of chemical agents such as pepper balls.
3. The Sheriff's Department should reinforce through training, policy, and inspection the need to be equipped with the necessary safety equipment. Flashlights during darkness are a critical piece of safety equipment as observed in this incident.

### Decision Making Training

Law enforcement is a profession that requires officers to make decisions under rapidly changing conditions, with limited information, that potentially could result in serious injury or death. How officers respond in these situations is influenced by patterns formed through education, training, and experience.

### Recommendations

1. The Sheriff's Department should review training techniques to ensure frequent use of Tactical Decision Games<sup>16</sup> that challenge participants to successfully resolve problems through quick effective decision making.

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<sup>14</sup> <https://nij.gov/journals/267/pages/use-of-force.aspx>

<sup>15</sup> Less lethal impact munitions are designed to have a low probability of serious injury or death to people.

<sup>16</sup> Tactical Decision Games developed for the military have been used successfully in a variety of professions including law enforcement, fire service, and medicine.

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2. The Sheriff's Department should review training to ensure the following decisions are included in training sessions involving the use of force:
  - a. What crime was committed?
  - b. Who is the threat toward?
  - c. Who is the threat from?
  - d. Is the threat actual or potential?
  - e. What level of resistance is exhibited?
  - f. Is the subject suicidal or homicidal?

### General Policy Considerations

The following recommendations are not a reflection of the response to this incident but items discovered when comparing the Sheriff's Department policies to similar policies of other law enforcement agencies.

The IACP model policy for use of force specifies two circumstances in which the use of deadly force may be warranted. The first is "to protect officers or others from what is reasonably believed to be a threat of death or serious bodily harm." Secondly, police officers may use deadly force to prevent the escape of a fleeing violent felon who the officer has probable cause to believe poses a significant threat of death or serious physical injury to the officer or others.<sup>17</sup>

### Recommendations

1. The Sheriff's Department should consider revising General Order 2/11 and applicable section in General Order 2/05.
  - a. The term "reasonable" is used throughout the order. A concise definition in a single location would provide clarity and understanding. An example from IACP model policies reads; "In determining the necessity for and appropriate level of force, officers shall evaluate each situation in light of the known circumstances, including but not limited to the seriousness of the crime, the level of threat or resistance presented by the subject, and the danger to the community."
  - b. Section II A 2 c should require the officer to have probable cause that a violent felony was committed **and** that if not immediately apprehended reasonable cause to believe the suspect may cause death or great bodily injury. The current policy allows either circumstance which is not consistent with contemporary practices.
2. Most of the polices reviewed in this report have not been revised in over three years. The Department should establish a policy review cycle that requires all policies to reviewed and reissued or revised on a cycle no longer than three years.

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<sup>17</sup> <http://iacppolice.ebiz.uapps.net/PersonifyEbusiness/ModelPolicyList/MPUseofForce.aspx>

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## APPENDIX

### Timeline of Events<sup>18</sup>

TIME	ACTION
6:44:18 PM	Walmart Asset Protection Associates call Sacramento Sheriff's Department to report a male in the store cutting tags off merchandise with a knife.
6:48:55 PM	Asset Protection Associates report that the male walked out of the store with the merchandise
6:49:07 PM	Asset Protection Associates report that they are contacting the male.
6:50:19 PM	Units are dispatched
6:52:39 PM	Sergeant asked that the radio channel be cleared.
6:52:50 PM	Sergeant advised the Taser did not work and the subject was holding a knife to his throat.
6:52:48 PM	A sergeant radios that they are on the west side of Safeway against the fence. After a brief pause the sergeant gives a brief description of a male white or Hispanic wearing a blue flannel shirt, bald head, about 20 years old. Sergeant also reports, "The second Taser didn't work."
6:53:58 PM	Sergeant reports that the subject tried to stab himself in the chest and is non-compliant
6:54:36 PM	Sergeant reports shots fired with one down on the North side of Safeway in the back and requests Code-3 fire.
7:00:08 PM	Fire Department arrived

Table 1 Timeline

Because the dispatch log relies on data entry and demands that the dispatcher perform multiple tasks an additional review was completed of the audio tape to capture the time from when the sergeants requested the radio traffic cleared to when they reported shots fired. The between these actions was 2 minutes 5 seconds.

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<sup>18</sup> All times are approximate and based on Dispatch log entries.

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Image of the Area



Figure 2 Aerial view of scene



Figure 3 Aerial view of scene - zoomed in